

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 99-0208 ITC
UNDERGROUND STORAGE TANK FEES
For Year 1998**

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ISSUE

I. Underground Storage Tank Fees – Imposition

Authority: IC 6-8.1-1-1; IC 6-8.1-1-6; IC 13-11-2-150; IC 13-11-2-151; IC 13-23-12-1

Taxpayer protests the assessment of the underground storage tank owner registration fee.

STATEMENT OF FACTS

Owner of gas station leased station to taxpayer with the understanding that taxpayer was to pay all fees and taxes as part of the lease, while making direct rental payments to the owner's bank account at the bank holding the mortgage on the station. Owner of station then relocated out-of-state with no forwarding information. The bank eventually began foreclosure proceedings and began seizing the taxpayer rental payments. Taxpayer operated the station until May 15th, 1998, making payments including the underground storage tank owner registration fee. At this time, taxpayer notified bank of its intention to vacate the property, the bank, being unable to locate the owner, foreclosed on the property and eventually resold it. Taxpayer was assessed the underground storage tank owner registration fee for period after taxpayer vacated the property.

I. Underground Storage Tank Fees – Imposition

DISCUSSION

The underground storage tank fee (hereinafter 'fee') is administered by the Indiana Department of Revenue per Indiana Code §6-8.1-1-6 which states in relevant part "The provisions of this article apply for the purposes of imposing, collecting, and

administering the listed taxes.” The fee is based on Indiana Code §13-23-12-1 and constitutes a listed tax by inclusion in the definition of “Listed taxes” at Indiana Code §6-8.1-1-1.

The fee is assessed based on Indiana Code §13-23-12-1 and is required of “the owner of an underground storage tank.” Indiana Code §13-11-2-150 & 151 provide definitions for “Owner” and “Owner or Operator” respectively. Taxpayer, as the renter of the property, operated the station on a day to day basis. Indiana Code §13-11-2-151(a) 1 defines “Owner or operator” as “a person who owns or operates the facility.” Indiana Code §13-11-2-150 has no provision to identify the “Owner” of a fuel storage tank as one involved in the operation of the facility.

Given the imposition of the fee on the owner of a tank, and the section’s specific definitions of owner versus owner and operator, this fee would not apply to the taxpayer.

FINDINGS

The taxpayer’s protest is sustained.